

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

VICTORIA A. WHORTON, :
Plaintiff, : Case No. 3:18-cv-307
v. : JUDGE WALTER H. RICE
COGNITIANS, LLC, et al.,
Defendants. :

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #26) THAT (1)
THE CITY OF DAYTON'S MOTION TO DISMISS (DOC. 7) BE DENIED
AS MOOT; (2) THE CITY OF DAYTON BE TERMINATED AS A PARTY
TO THIS CASE; AND (3) THIS CASE REMAIN PENDING AS TO THE
NAMED DEFENDANTS COGNITIANS, LLC AND THE DAYTON
MUNICIPAL COURT

This matter is currently before the Court on Magistrate Judge Michael J. Newman's Report and Recommendations, Doc. #26, recommending that the motion to dismiss filed by the City of Dayton ("City"), Doc. #7, be denied as moot and that the City be terminated as a party to this litigation. Although notice regarding the filing of Objections to this Report and Recommendations was given, no Objections were filed. For the reasons set forth below, and following a thorough *de novo* review, the Court ADOPTS said judicial filing, Doc. #26, to the extent it recommends overruling the motion to dismiss, Doc. #7, as moot and terminates the City as a party to this litigation.

The original complaint filed by Plaintiff, pro se, named as Defendants the City and Cognitians, LLC. Doc. #4. Thereafter, the City filed its motion to dismiss, Doc. #7, and Plaintiff requested and received leave to file an amended complaint. Doc.#9 and Notation Order sustaining same. Plaintiff filed her Amended Complaint, Doc. #12, and in this amended pleading named only the Dayton Municipal Court and Cognitians, LLC as Defendants. Because the amended pleading supersedes the original complaint, the City is no longer a party and is effectively dismissed from these proceedings. *Drake v. City of Detroit*, 266 Fed.Appx. 444, 448 (6th Cir.2008) (stating that a prior “complaint is a nullity, because an amended complaint super[c]edes all prior complaints”); See *Howard v. Montgomery Cty. Jail*, No. 3:16-CV-517, 2018 WL 3020216, at *2 (S.D. Ohio June 18, 2018), *report and recommendation adopted*, No. 3:16-CV-517, 2018 WL 3832946 (S.D. Ohio Aug. 13, 2018) (holding that a party named in the original complaint, but not named in the operative amended pleading, is no longer a party to the case and has, effectively, been dismissed as a party from the action) (citing *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989)). Based on this legal authority, the motion to dismiss filed by the City is moot.

Accordingly, the Court ADOPTS Magistrate Judge Newman’s Report and Recommendations, Doc. #26, OVERRULES the City’s motion to dismiss, Doc. #7, as moot and terminates the City as a party to this litigation. The case remains pending as to Defendants Cognitians, LLC and the Dayton Municipal Court.

Date: February 3, 2019


WALTER H. RICE
UNITED STATES DISTRICT JUDGE